

## **2013 DRAFTING REQUEST**

### **Bill**

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Wanted: <b>As time permits</b>	Same as LRB:
For: <b>Jeffrey Mursau (608) 266-3780</b>	By/Representing: <b>Tim Gary</b>
May Contact:	Drafter: <b>mglass</b>
Subject: <b>Nat. Res. - parks and forestry</b>	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**  
 Requester's email: **Rep.Mursau@legis.wisconsin.gov**  
 Carbon copy (CC) to:

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## **Gibson-Glass, Mary**

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**From:** Rep.Mursau  
**Sent:** Tuesday, September 17, 2013 4:48 PM  
**To:** Gibson-Glass, Mary; Kite, Robin  
**Cc:** Sen.Tiffany; Rep.Clark; DeLong, Paul J - DNR; Mather, Robert J - DNR; Nelson, Kathryn J - DNR; Williams, Quinn L - DNR  
**Subject:** Drafting Request: Managed Forest Law Revisions as Recommended by the Wisconsin Council on Forestry

Mary & Robin,

As a member of the Council on Forestry and chairman of the Assembly Committee on Environment and Forestry, I request the linked proposal from the Council on Forestry be drafted into bill form except numbers 1, 13, 17 and 19. Further, #5 should be drafted to require 20 acres minimum, not 15, for entry or renewal into the program.

DNR has indicated they are available to help answer questions you may have throughout the drafting process. Please feel free to call on DNR or me to answer any questions you might have.

This bill is a high priority for the council and the legislators who sit on it.

Thank you.

Sincerely,  
Representative Jeff Mursau

<http://council.wisconsinforestry.org/pdf/MFLRecommendations2013.pdf>

# The Managed Forest Law

## A Summary of Recommended Program Revisions

Prepared By:

The Wisconsin Council on Forestry

Date:

June 19, 2013





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## EXECUTIVE SUMMARY

The following report contains 24 proposed revisions to the Managed Forest Law (MFL) that Wisconsin's Council on Forestry (CoF) reached consensus on and recommend for consideration by the legislature as modifications to the Managed Forest Law.

The level at which the Council members could reach consensus varies by issue. Some issues have fairly specific proposed modification, while on others, Council members agree the issue should be subject to more detailed legislative analysis. The ease or level at which the Council reached consensus on a given issue should not be misconstrued as an indicator of the importance of the individual issue for MFL modification, or as a scale of the extent of the benefits resulting from the proposed change.

The package of 24 issues presented here comprises, what the Council feels, is a well-balanced group of modifications. Attempts to single out certain issues could have consequences with interconnected issues or may impact support for the overall process. More detailed analysis of the issues and proposed modifications follows.

The four issues listed under the Administration group (Proposed Revisions 20-24) were deemed to all be reasonable and generally without concern to advance. The Council without too much difficulty or concern reached consensus on the proposed modifications on 17 of the issues. These 17 issues included:

- *Reduce/restructure withdrawal taxes and fees* – Proposed Revision 2
- *Change the procedure to allow counties to generate and collect financial transactions for MFL yield and withdrawal taxes* – Proposed Revision 3
- *Eliminate the 5% yield tax comparison requirement for determining withdrawal taxes* – Proposed Revision 4
- *Allow small acreage withdrawals without full description withdrawal* – Proposed Revision 5
- *Allow the sale or transfer of a portion of a MFL legal description without having to withdraw the entire legal description prior to ownership transfer* – Proposed Revision 6
- *Allow lands to remain in MFL, or allow exempt withdrawal if natural events cause lands to no longer meet productivity requirements* – Proposed Revision 7
- *Allow exempt withdrawal of limited unproductive acreage if splits in ownership cause lands to no longer meet productivity requirements* – Proposed Revision 8
- *Increase minimum acreage entry size allowed* – Proposed Revision 9
- *Allow additions to existing MFL entries regardless of entry year* – Proposed Revision 10
- *Eliminate lands with improvements with assessed values* – Proposed Revision 11
- *Shift the contents of s. NR 46.18 (4), Wis. Adm. Code (large owners), to the managed forest land subchapter of Ch. 77, Stats* – Proposed Revision 12

- *Allow for electronic signature/approval by DNR and landowner on revised management plan documents for existing participants* – Proposed Revision 14
- *Eliminate the application referral process* – Proposed Revision 15
- *Revise the current application process for renewal of MFL lands* – Proposed Revision 16
- *Require landowners to identify access for the public that is equivalent to the landowner's access to lands open to the public or deny the ability to enroll (or keep) MFL lands as open* – Proposed Revision 18
- *Repeal prohibition on recreational leasing for small landowners* – Proposed Revision 19
- *Modify DNR oversight intensity in on-the-ground-management for certified large owners* – Proposed Revision 20

The Council, after more lengthy discussion and in some cases after reworking the specific proposed modification, was able to reach general consensus to move these three remaining issues forward:

- *Change in the rate for open/closed acreage* – Proposed Revision 1  
For any individual issue or proposed modification, the level of agreement, or importance of the modification being made to the MFL, typically varies by stakeholder, individual, or group. Adjusting the per acreage fee, and if so to what degree, is a modification where this is especially true. This, at least in part, played a role in the Council's difficulty in reaching consensus on a specific direction for this issue. The CoF concluded that the rates, how they are calculated and how the fees are distributed needs to be examined further.
- *Require modified management plans for DNR designated large ownerships to include the establishment of an allowable harvest calculation* – Proposed Revision 13  
The CoF reached a consensus on the recognition that the continued production of timber on large ownerships be addressed within the parameters, requirements, and intent of the MFL to include considerations for timber volume and the time component of timber being on the market. The CoF consensus included awareness that this issue may warrant further analysis.
- *Allow landowners to open or close lands regardless of acreage* – Proposed Revision 17  
The CoF hesitantly, by consensus, agreed that this modification addresses the process of "gerrymandering" ownerships to increase closed acreage. The CoF also agrees with the value of MFL lands open for public use and as such recognizes the conflict with this and the proposed modification

## BACKGROUND

In 2012 the Council on Forestry undertook an effort to identify and assess potential modifications to Wisconsin's Managed Forest Law. The intent was to generate a set of modifications that could be introduced through legislative procedures to ultimately amend the MFL. The alterations, as determined through the procedure described below, focused on efforts to modernize and streamline MFL, and maintain overall program viability. More specifically, any modifications should ideally accomplish the following criteria:

- *Reduce DNR administration cost, conflict, and/or law complexity*
- *Maintain public, non-MFL stakeholder, understanding and support*
- *Maintain municipality and local government support*

- *Support the core MFL purpose of sound forest management and commercial timber production (as ref. Wis. Stat. 77.80)*
- *Encourage continued program enrollment and discourage non re-enrollment*
- *Address concerns of MFL forest land owner stakeholder groups*
- *Address concerns of industry stakeholder groups*

This document provides a summary of the potential modifications agreed to by members of the Council on Forestry. An analysis of the current situation and the proposed modifications are included.

## PROCEDURE

The proposed modifications contained herein were in part the result of the efforts of a committee established by the CoF in 2012 to address concerns expressed by selected forestry stakeholders regarding numerous issues related to the DNR administration of the program and MFL landowner participation. Individuals participating in the committee's efforts include:

- ❖ Richard Wedepohl – CoF Member, Wisconsin Woodlands Owners Association (Chair Phase 1)
- ❖ Tom Hittle – CoF Member, Steigerwaldt Land Services, Inc. (Chair Phase 2)
- ❖ Henry Schienebeck – CoF Chair – Great Lakes Timber Professionals Association
- ❖ Representative Jeff Mursau – CoF Member
- ❖ Representative Fred Clark – CoF Member
- ❖ Nancy Bozek – Wisconsin Woodlands Owners Association
- ❖ Kim Quast – CoF Member, Wisconsin Consulting Foresters – Quast Forestry Consulting
- ❖ Troy Brown – CoF Member, Lumber Industry Representative – Kretz Lumber
- ❖ Bill O'Brion – Plum Creek
- ❖ Richard Stadelman – Wisconsin Towns Association

### Technical Advisory/Non-voting members

- ❖ Mark Paulat – Wisconsin Department of Revenue
- ❖ Robert Mather – Department of Natural Resources - Staff technical advisor
- ❖ Kathy Nelson – Department of Natural Resources - Staff technical advisor

The Department of Natural Resources, consistent with the Secretary's ongoing directive to provide technical assistance, but not policy advice, on any and all issues within the purview of the legislature, provided members to the committee for technical assistance only, and in furtherance of its obligations to provide technical assistance in support of the work of the Council. None of the proposals or conclusions represents the formal policy position of the Department, since formal policy determinations are generally within the scope of the authorities granted to the Natural Resources Board or the Secretary. Nothing in this document should be interpreted as the Department of Natural Resources support or policy advice, particularly considering the multiple user groups, stakeholders and natural resource impacts that were not represented as part of the deliberations in the generation of this document (Tribes, hunting, fishing, water quality, recreational access, etc.).

At the February 1, 2013 CoF meeting Council members were presented with a list of issues compiled by the DNR which contained those identified by the MFL Committee and additional administrative efficiency issues identified by the DNR in their capacity as a technical advisor. Council members were asked to select the top five issues of concern to be addressed as possible amendments to the MFL. Selections were tallied and summarized and for this document grouped into the following categories:

- \* Tax Rates and Fee Structures (1-4)
- \* Management and Management Plans (12-16)
- \* DNR Oversight (20)
- \* Eligibility (5-11)
- \* Leasing and Open/Closed Acreage (17-19)
- \* Administration (21-24)

Issues occurring at least three times in the Council member's list of their "top 5" were selected for additional analysis. Certain issues were broken down further from the initial description for individual consideration and analysis.

## RESULTS

This report provides an analysis of each issue agreed to by the CoF. A brief narrative covering the current situation and proposed modifications is presented along with indication as to if the change would be retroactive (in effect for lands already enrolled *and* new enrollments) or prospective (only in effect for new entries after MFL amendment).

The report prepared by the MFL Committee, including all potential modifications considered and those removed from consideration, can be found in the CoF meeting materials for the April 22, 2013 meeting located at <http://Council.wisconsinforestry.org/meetings.php>.

The package of 24 issues presented here comprises what the CoF feels is a well-balanced group of modifications. Attempts to single out certain issues could have consequences with interconnected issues or may impact support for the overall process.

# MODIFICATIONS

## Tax Rates/Fee Structure

### ***Proposed Revision 1: Change in rate or how rates are calculated for open/closed acreage.***

*Current Situation:* MFL landowners pay an acreage share tax in place of regular property taxes. MFL landowners who close land to public recreation also pay a closed acreage fee. There are two acreage share and closed acreage fee formulas, depending if lands were enrolled in MFL in 2004 and earlier or 2005 and later. Statewide data is used to determine the acreage share tax rate and closed acreage fees for both sets of formulas. Since assessed values, equalized values, tax rates, and other tax values differ depending upon land location within the state, using a statewide value can show greater MFL tax rate benefits in some parts of the state and lower MFL tax rate benefits in other parts of the state. Conversely, some local municipalities may see that property tax revenues are greatly reduced with lands being enrolled in MFL, while other municipalities see a minimum reduction in property tax revenues. The open and closed per acre rates are summarized as follows looking back to 2003 and ahead to 2017.

EFFECTIVE DATES	Enrolled 1987 - 2004		Enrolled 2005 or Later	
	OPEN	CLOSED	OPEN	CLOSED
2003 - 2007	\$0.83	\$1.95	\$1.46	\$7.28
2008 - 2012	\$0.67	\$1.57	\$1.67	\$8.34
2013 - 2017	\$0.79	\$1.87	\$2.14	\$10.68

Open Acreage share tax = 5% of average statewide tax on productive forest land (\$42.70/acre)

Closed acreage fee = 20% of average statewide tax on productive forest land (\$42.70/acre)

Under current law, local municipalities normally keep 80% of the open acreage tax and the remaining 20% is remitted to the County. The entire amount of the closed acreage fee is remitted to the County, who then remits the entire amount to the State's Forestry Account for allocation by the Legislature.

Current MFL Open Acres ±: 1,107,000 acres (82% enrolled 1987 – 2004)

Current MFL Closed Acres ±: 2,138,000 acres (65% enrolled 1987 – 2004)

Total MFL Acres: 3,245,000 acres

Concern has been expressed by some that the current closed acreage fee in particular is too high and can lead to landowners seeking other tax treatments or pursuing land management which can have negative impacts on forest sustainability. Property taxes on land categorized for taxation purposes as Agricultural Forest can be lower than the MFL per acre closed rate in parts of Wisconsin. Concern has also been expressed by some that per acre property tax rates much above the open rate are not conducive to economically and sustainably managing forested properties for timber. There is also concern regarding tax revenue amount and shifting of tax burdens if rates were lowered.

***Retrospective / Prospective:*** The 2005 and later tax formula was made effective for all lands enrolled or re-enrolled in MFL on or after April 28, 2004, setting some precedent that any new tax rate or formula also be made prospective after the effective date of the law change, although there is no recommendation on this from the CoF.

***Conclusion:*** The CoF concluded that the rates, how they are calculated, and how the fees are distributed needs to be examined. There was Council consensus that consideration should be given to allocating some portion of the closed acreage fee to local municipalities. In the end CoF believes MFL rates need to be attractive to landowners to incentivize enrollment and foster sustainable forest management while at the same time providing the public with a return consistent with their investment in the program.

## **Proposed Revision 2: Reduce/restructure withdrawal taxes and fees.**

*Current Situation:* Landowners who withdraw lands from MFL early are required to pay a withdrawal tax and fee based upon the assessed value of the land in the year prior to withdrawal, the net town tax rate, and the number of years under the law. All acreage share and yield taxes are subtracted. A \$300 withdrawal fee is added. Some withdrawal taxes can be high if lands were re-assessed while enrolled in MFL. The withdrawal tax does a variety of things: (1) reimburses local municipalities for lost tax revenue, and (2) provides an incentive to keep forests as working forests. In each scenario, landowners who withdraw early may not be providing timber products and other public benefits for the 25 or 50 year term in which they enrolled. The MFL withdrawal tax was originally designed to reimburse municipalities for unpaid property tax, however the longer the lands are enrolled in the MFL program the more chance that lands have been re-assessed. The reassessment has the effect of increasing the size of the withdrawal tax payment since the withdrawal tax formula uses the assessed value in the year prior to withdrawal and then uses that value for the entire length that lands were enrolled in MFL, which can result in a withdrawal cost exceeding the actual value of the property. Previously paid acreage share and yield tax amounts are subtracted from the withdrawal fee owed by the landowner withdrawing the MFL lands.

Withdrawal penalties for converting agricultural use value taxed lands range from 5 to 10 percent of adjusted land values, unless left fallow for one year prior to development after which no penalties are assessed for conversion. Penalties for lands under the Farmland Preservation Program rezoned for development were eliminated by the legislature in 2011 because they were thought to be excessive. More information on the assessment of agricultural properties can be found here: <http://www.revenue.wi.gov/pubs/slf/pb061.pdf>

*Proposed Modifications:* Modify the current withdrawal tax formula to reduce the amount due on lands if voluntarily or involuntarily withdrawn. Establishing a maximum number of years to be used in the withdrawal tax formula would acknowledge the amount of time a landowner was enrolled in MFL and remained in compliance with the program before withdrawing. The procedure of subtracting the paid acreage share and yield taxes from the withdrawal fee would be eliminated. (This also provides for the elimination of the need to report harvest volumes on cutting reports by legal description.) The calculation of the withdrawal fee could be based on the individual parcel ad valorem tax for the year prior to withdrawal and a maximum number of years rather than the total years the lands were enrolled.

*Retroactive:* This modification is envisioned to be retroactive for all existing and future MFL enrollments.

*Conclusion:* The CoF concluded that determining a reasonable maximum number of years to be used to calculate withdrawal tax will require further analysis in order for it to be appropriate to encourage continued MFL participation of enrolled lands along with new enrollments.

## **Proposed Revision 3: Change the procedure to allow counties to generate and collect financial transactions for MFL yield and withdrawal taxes.**

*Current Situation:*

MFL Yield Tax: The DNR bills landowners for yield tax every one to two months following completion of a timber harvest on MFL lands and the submittal of a cutting report by the landowner. DNR calculates amount owed (volume harvested by forest product multiplied by an average annual zonal rate). There are 13 zones in the state to better reflect market conditions. The landowner is given until the end of the month following billing to pay the invoice and the state can charge 12% interest on late payments. The

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DNR collects monies, including interest, and is required by statute to pay the local municipality annually. (Normally this payment is done quarterly). The local municipality is then required to pay the County 20% of amount collected annually. This occurs in 71 counties with a total of approximately 2,000 invoices statewide annually. The number of invoices by county varies widely from a couple invoices per year to several hundred.

**MFL Withdrawal Tax:** The DNR determines which lands are no longer in compliance with the law. The landowner is provided an opportunity to come into compliance and if they fail to do so the DNR issues an Order of Withdrawal. Copies of that Order are sent to the County and local municipality. The DNR then works with the Department of Revenue (DOR) to determine the MFL withdrawal tax amount (DOR determines the "net property tax rate" value). DNR credits any yield and acreage share taxes paid for that specific parcel), adds a \$300 administration fee, generates the bill, collects the funds, and pays the local municipality once payment has been received. The DNR keeps the \$300 administration fee and sends the remainder to the local municipality. The local municipality currently keeps 80% and sends 20% to the County.

***Proposed Modifications:*** Have the counties take over the MFL yield and withdrawal billing and collection.

**MFL Yield Tax:** The DNR would continue to ensure timber is harvested sustainably and determine the amount of the yield tax owed. The DNR would enhance their computer system to compute the bill amount and make information available for a county to download via electronic file. Counties would be given access to DNR computer database in order to facilitate timely and simple access to those records for which an invoice needs to be prepared. Counties would invoice and collect yield taxes from landowners. They would also be able to charge interest on late amounts. Counties would then be required to split those funds with the local municipality as required by law. (20% county/80% local municipality). Counties would handle any unpaid invoices as a special charge on the property tax bill as currently authorized by Statute. Local DNR foresters would be made available for landowner or municipality questions regarding an individual yield tax account.

**MFL Withdrawal Tax:** The DNR would still determine when to issue an Order of Withdrawal. The county would determine and collect the withdrawal tax due. The DNR would seek to have the withdrawal tax rate formula simplified to be the actual property tax rate for that specific parcel the year prior to withdrawal as previously described. This change would make the calculation simpler and better reflect the actual taxation rate that would have been paid had the land not been enrolled in the MFL. Once the withdrawal tax is collected, the County would send the local municipality their share. The DNR would seek to allow the county to bill and keep the \$300 administration fee and would also seek to not have the landowner receive credits for any MFL acreage share or yield taxes paid while enrolled in the law.

***Retroactive:*** This proposed process would be used for all existing and future MFL and FCL entries/landowners.

***Conclusion:*** Council members have had some communication with county representatives and concluded there is interest on their part to examine this further. The CoF reached consensus to move this issue forward for legislative consideration.

LRB 3187

**Proposed Revision 4: Eliminate the 5% yield tax comparison requirement for determining withdrawal taxes.**

**Current Situation:** Landowners are required to pay the higher of two withdrawal tax calculation formulas, based on (1) an amount based on assessed value, net town tax rate and number of years in the MFL program, or (2) 5% of the established value of timber based on tree species, volume and product within the established market zones. In 90% of cases the formula based on assessed value is used. DNR determines the 5% yield tax calculation based on forest reconnaissance data contained in the DNR computer database. If the two withdrawal tax calculations are close, DNR requests DNR foresters to obtain new forest reconnaissance data before making the final determination of which calculation to use.

**Proposed Modifications:**

- 77.88  
(5)(a)2.
- Eliminate the comparison of the 5% yield tax with the assessed value calculation.
  - Eliminate the need for a court ordered estimate if landowners disagree with the 5% yield tax calculation when determining withdrawal taxes.
  - Use the withdrawal calculation process in Proposed Revision 2.

**Retroactive:** This proposal would need to be made retroactive to all MFL landowners in order to create efficiencies in MFL administration.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

## Eligibility

### **Proposed Revision 5: Allow small acreage withdrawals without full description withdrawal.**

**Current Situation:** Landowners are allowed to withdraw lands from MFL if they are (1) an entire parcel of MFL lands (not necessarily the same as a tax parcel), (2) all MFL lands within a quarter-quarter section, or (3) all MFL lands within a government lot or fractional lot. Lands that are transferred to a new owner must meet MFL eligibility requirements. Transferred lands not meeting these criteria must be withdrawn from MFL. Most MFL withdrawals are due to splits in ownership and the transfer of parcels less than 10 acres in size.

#### **Proposed Modifications:**

- Allow landowners to withdraw small acreage to be used for building site or land sale without impacting remaining MFL land eligibility provided remainder meets minimum acreage eligibility.
- Limit the number of times a small acreage can be withdrawn during an order period (in part to prevent withdrawal as subdivision developments) to a maximum of 1 withdrawal for lands under a 25 year MFL order and 2 withdrawals for lands under a 50 year MFL order.
- Landowner would pay normal withdrawal tax, as proposed in the "Reduce/restructure withdrawal taxes and fees" modification but only on acres removed.
- Allowed withdrawals would be in whole withdrawal acres and limited in size to 1.0 to 5.0 acres and meet minimum zoning requirements.

**Retroactive:** In effect for all present and future MFL entries.

**Conclusion:** The CoF agreed to move this issue forward with recognition this be allowed to a limited extent per MFL order.

### **Proposed Revision 6: Allow the sale or transfer of a portion of a MFL legal description without having to withdraw the entire legal description prior to ownership transfer.**

**Current Situation:** Lands transferred to new owners during the order period must meet all eligibility requirements in place for initial enrollment. The lands must also be transferred as an entire quarter-quarter section, fractional or government lot, or an entire parcel. Lands that do not meet all of the eligibility criteria must be withdrawn from the MFL program. An owner looking to sell a portion of a MFL description is required to withdraw the entire legal description and pay the withdrawal fees.

#### **Proposed Modifications:**

- Eliminate provisions requiring only entire legal descriptions be transferable while still in the MFL.
- Coordinate continued MFL eligibility requirements for transferred and retained portions of the legal description with proposed modifications related to minimum eligibility size and the provision to *Allow exempt withdrawal of limited unproductive acreage if splits in ownership cause lands to no longer meet productivity requirements.*

**Retroactive:** This will be retroactive for all existing entries.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

**Proposed Revision 7: Allow lands to remain in MFL or allow exempt withdrawal if natural events cause lands to no longer meet productivity requirements.**

**Current Situation:** MFL lands must meet eligibility requirements for initial enrollment and continued eligibility, including (1) 10 or more acres, (2) at least 80% productive forest, (3) no more than 20% unsuitable/unproductive forest, (4) not developed for commercial recreation, industry, trade, or other land use incompatible with the practice of forestry, (5) not developed as a human residence. Lands that do not meet these criteria must be withdrawn from the MFL program. The number of withdrawals due to lands not meeting productivity requirements after natural events is low, however it is expected that the number may increase as a result of invasive species such as the Emerald Ash Borer.

**Proposed Modifications:**

- 77.82(1m)
- Establish the ability for lands to exceed the non-productive level for a designated amount of time to provide for restoration of forest productivity levels, and/or allow exempt withdrawal if reason for the lands exceeding non-productivity levels is due to a natural event (flooding, insect, disease, etc., to be further defined by DNR in administrative code).
  - At the end of enrollment period (25 or 50 years) any lands not meeting productivity requirements would not be allowed to be re-enrolled.
  - Administrative code could identify the amount of time allowed for MFL lands to be brought back into compliance with eligibility requirements.

**Retroactive:** This will be retroactive for all existing and future entries.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

**Proposed Revision 8: Allow exempt withdrawal of limited unproductive acreage, if splits in ownership cause lands to no longer meet productivity requirements.**

77.88(3k)

**Current Situation:** MFL lands must meet eligibility requirements for initial enrollment and continued eligibility, including (1) 10 or more acres, (2) at least 80% productive forest, (3) no more than 20% unsuitable/unproductive forest, (4) not developed for commercial recreation, industry, trade, or other land use incompatible with the practice of forestry, (5) not developed as a human residence. Lands that do not meet these criteria must be withdrawn from the MFL program. Lands that were enrolled as larger ownerships with orders that met productivity requirements at the time of entry occasionally no longer qualify after a land transfer and MFL order division.

**Proposed Modifications:**

- Maintain provisions requiring transferred (sold and still under MFL) lands must meet the 80/20 productivity eligibility requirements, but allow exempt withdrawal of the minimum acres needed in order for the parcel to meet productivity requirements.
- Require that only the minimum amount of unproductive acres be allowed to be withdrawn in order to allow remaining parcel(s) to meet 80/20 productivity eligibility requirements. This would be an exempt withdrawal.

*Retroactive:* This would be in effect for existing and new MFL lands.

*Conclusion:* The CoF agreed to move this issue forward for legislative consideration.

### ***Proposed Revision 9: Increase minimum acreage entry size allowed.***

*Current Situation:* The minimum acreage for enrollment in MFL is 10 contiguous acres. Of these 10 acres, 80% of the lands must meet productivity requirements, and no more than 20% of the lands can be unsuitable for producing timber products. None of the lands can be developed for commercial recreation, industry, trade or a human residence. The minimum size of 10 acres was established because the expired Woodland Tax Law (WTL) had a 10 acre minimum.

*Proposed Modifications:* Increase the minimum size requirements for new MFL entry or parcel size to 15 acres. Maintain the 10 acre minimum eligibility requirement.

*Prospective:* The proposal would affect new entries and re-enrollments only. *in text*

*Conclusion:* The CoF agreed to move this issue forward with recognition that further analysis may be warranted to examine impacts in certain areas of Wisconsin where small woodlots are prevalent and important to maintain.

### ***Proposed Revision 10: Allow additions to existing MFL entries regardless of entry year.***

*Current Situation:* Landowners who enrolled lands in MFL in 2004 and earlier are unable to add lands to these MFL Orders. The legislature addressed the inability to add lands to a 2004 or earlier MFL Order by creating the ability to withdraw the 2004 and earlier entry, and re-enroll those same acres with the additional acreage to be added under a 2005 and later MFL entry. A withdrawal tax is not issued in these situations. Landowners are taxed using the 2005 and later formulas. A new 25 or 50 year term would be in effect. Withdrawal taxes include the time the lands were enrolled in the 2004 and earlier order until the time the original MFL Order would normally have expired. DNR is required to track past withdrawals and re-designations.

#### ***Proposed Modifications:***

- Modify the references to the 2005 change in the MFL program when the change in tax calculation formula became effective.
- Modify the requirements that after April 28, 2004 lands that meet eligibility requirements must be enrolled as new entries. Any additions to an existing entry would expire the same year as the original order. Eliminate the withdrawal and re-designation application process.
- Acreage added to an existing MFL entry is taxed at same rate as the initial acreage and treated the same for withdrawal fee calculations.
- Additions would only be for contiguous acreage and not for acreage able to stand alone and still be eligible to be entered into the MFL.

*Retroactive:* Changes in how to process withdrawal taxes would be made retroactive to reduce the tracking of Withdrawals and Re-designation MFL Orders, and the additional withdrawal tax calculations needed if lands are withdrawn early from the MFL program. This provision allows for new additions to existing MFL orders.

**Conclusion:** The CoF agreed to move this issue forward subject to it being limited to otherwise ineligible, contiguous lands.

**Proposed Revision 11:** Eliminate lands containing improvements with assessed values.  
Except those improvements for land management purposes  
(culverts, fences, bridges, roads).

**Current Situation:** Landowners may enroll lands with buildings that are used for working or recreating on the MFL property. Buildings are taxed as personal property. DNR withdraws lands from MFL if personal property taxes become delinquent. Buildings used for a human residence must not exceed 4 of the 8 building characteristics as outlined in NR 46, Wis. Admin. Code, except that buildings created prior to 2004, when DNR announced in the Forest Tax and Stewardship Newsletter that landowners enrolled in MFL prior to the 1997 statute change and who had not already built a human residence needed to abide by the NR 46 building requirements. Previously existing structures on MFL lands exceeding the NR 46 building requirements have been allowed to remain in the MFL program until expiration. Many cabins are upgraded or homes built new to allow for human residences and habitation. This has the appearance of lands not being compatible with the practice of forestry, making it difficult for the public to support. Buildings meeting the building criteria and landscaped also provide difficulties in determining if MFL lands with buildings can remain in the MFL program.

**Proposed Modifications:**

- Change statutory provisions to eliminate entry of lands with improvements.
- Eliminate references to the building requirements. Will need to keep this provision for those MFL entries that are already enrolled and will be grandfathered up to a specific date identified in the statute.
- Include wording on the property tax rolls to show lands with improvements are not allowed after the effective date of the MFL change. Similar wording would be added to statutory provisions for withdrawal of lands for failure to pay personal property taxes.
- Set whole acre exclusion area surrounding any buildings.

**Prospective:** This would be in effect for all new entries.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

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## **Management and Management Plans**

**Proposed Revision 12:** Shift the contents of s. NR 46.18 (4), Wis. Adm. Code (large owners), to the managed forest land subchapter of Ch. 77, Stats.

LRB  
- 3195

**Current Situation:** DNR allows landowners meeting the criteria of a large landowner to keep management plans and forest reconnaissance data for their properties in their own ownership or office, and provide DNR with a commitment to follow their management plan. DNR has the authority to audit the large landowner's management plan and reconnaissance data. DNR has given consideration to large landowners in the management of their properties in that a large landowner is not required to have site specific management plans, but rather a general plan on the management of their overall property. Large landowners have a forester on staff or retained, have reconnaissance data for their property and management criteria on when to harvest and update forest reconnaissance data. DNR may audit management plans and systems to determine continued eligibility under the MFL program.

**Proposed Modifications:** Copy the wording for large ownership requirements from NR 46, Wis. Admin. Code and place it into ch. 77, Wis. Stats. While the proposed change has little effect on large or small landowners, moving the NR 46 wording to statute allows for the statute to reflect different changes for large landowners. (See below for the specific text of NR 46.18 (4).)

**Retroactive/Prospective:** This proposal has no effect on large or small landowners, either retroactively or prospectively.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

s. NR 46.18 (4), Wis. Adm. Code:

77.82(3m)

(4) LARGE OWNERSHIPS.

- (a) The requirements of this section for management plans may be modified by the department for ownerships exceeding 1,000 acres after consideration of the following:
1. Other land of the owner entered as managed forest land, forest crop land or other forest tax law programs administered by the department.
  2. The number of counties in which lands proposed for entry or renewal or the owner's existing managed forest land and forest crop land and woodland tax law lands lie.
  3. The existence and availability for review of a management plan prepared by or for the owner and acceptable to the department.
  4. Submission of a written commitment from an owner to provide, upon department request, information from the management plan for review or audit. The commitment shall describe the management plan and outline the procedure used to update and amend the management plan.
  5. An owner's demonstrated consistent accessibility to competent technical forest management assistance through staff or consultant services.
- (b) A management plan under s. 77.82 (3), Stats., shall be developed by owners who no longer qualify as a large ownership in sub. (4) (a). All items listed in s. NR 46.16 (2) (f), (g), and (h) must be submitted to the department for approval within one year after being notified by the department of no longer meeting the requirements in sub. (4) (a).

**Proposed Revision 13: Require modified management plans for DNR designated large ownerships to include the establishment of allowable harvest calculations.**

**Current Situation:** Landowners who qualify as a large landowner are expected to follow their own written management plans. DNR can audit those plans and other program criteria to ensure lands enrolled continue to meet conditions of the MFL program. Harvesting occurs according to the landowner's management plan.

**Proposed Modifications:** Require a calculated allowable harvest be established for large landowner properties. This modification would provide for multiple accepted approaches to calculating allowable harvests and allow harvest levels that can vary to some definable degree over time. The calculated allowable harvest would require DNR approval to ensure compliance with statutory requirements. Administrative code would be developed to identify what is required in allowable harvest analysis.

**Retroactive/Prospective:** The CoF remains silent as to whether or not requirements to address this topic be retroactive or prospective.

**Conclusion:** The CoF reached a consensus on the recognition that the continued production of timber on large ownerships be addressed within the parameters, requirements, and intent of the MFL to include considerations for timber volume and the time component of timber being on the market. The CoF consensus included awareness that this issue may warrant further analysis.

**Proposed Revision 14: Allow for electronic signature/approval by DNR and landowners on revised management plan documents for existing participants.**

**Current Situation:** In the past, forest management plans for MFL properties were hand written and required the signature of both landowner and DNR forester. The signatures on the management plan acknowledged that both the landowner and DNR forester agreed with forest management prescriptions. Changes have occurred with the development of WisFIRS and computer generated management plans. Currently landowners submit their proposed management plan to DNR for approval as an attachment to their MFL application. The MFL application includes a landowner signature. DNR approves the management plan along with approving the application.

DNR requires all management decisions to consider current stand conditions, current science, current landowner goals and new MFL program requirements when implementing scheduled forest practices. This requirement allows sound forestry to be practiced on all MFL lands, regardless of specific wording contained in management plans. DNR foresters are required to adjust management plans based on new landowner goals, current forest conditions and current science, and program requirements.

Future updates to management plans will be facilitated with WisFIRS. As forest practices are completed, new forest reconnaissance data is collected and practices are entered into WisFIRS generating a new plan for the landowner. DNR foresters on occasion have struggled in the past to complete updated management plans since the current process to obtain a landowner's signature can be very time consuming.

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**Proposed Modifications:** Allow DNR personnel to obtain landowner approval and acknowledgment of a revised management plan by electronic means using e-mail or other electronic formats.

**Retroactive:** Updated management plans currently being written through WisFIRS do not have a space for landowner or DNR signature. (The signatures are a part of the application process for new enrollees into MFL.) Updated management plans will need to be developed with a method to allow for electronic approval of the revised plan. This change will be for updates to existing plans.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

### **Proposed Revision 15: Eliminate the application referral process.**

LRB 3195

**Current Situation:** DNR is required to have a referral system and a process to determine if services from a Certified Plan Writer (CPW) are not available. The process requires landowners to have submitted a written request for plan writing services through the Forestry Assistance Locator. If by January 1 in the year an MFL application is due, landowners who have not been contacted by a CPW may request the DNR prepare the MFL application. Area DNR forestry supervisors will then contact each CPW in the county in which the lands lie and verify that CPWs received the request and have either denied or not offered services. CPWs may make an offer at this time. If CPWs do not respond to the area forestry supervisor or have replied that they are not interested in providing service, the area forestry supervisor may assign the development of that MFL application to a DNR forester. DNR is required to prepare MFL applications for landowners if services from a Certified Plan Writer (CPW) are not available. As of 2013, there are 178 CPWs statewide. DNR has not developed an MFL application for 2 years, with DNR developing an annual average of 1 to 2 MFL applications over the past 4 years. The CPW program continues to grow, making it less likely that landowners will be unable to find services from a CPW.

#### **Proposed Modifications:**

77.62(3)

- Eliminate the need to develop and manage a referral list.
- Eliminate the collection of a management plan fee.
- Eliminate the need to determine when services from a CPW are not available.
- Eliminate the contracting of MFL applications by the Department.
- Elimination of the referral system would mean that DNR Foresters would not develop any new MFL applications or charge landowners for MFL applications that it develops. DNR would continue to collect information on fees charged by CPWs as a way to determine cost-share rates for plan development under the Wisconsin Forest Landowner Grant Program (WFLGP).

**Prospective:** This provision would be prospective.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

**Proposed Revision 16:** Revise the current application process for renewal of MFL lands.

LPB 3/95

**Current Situation:** Landowners may re-enroll lands in the MFL program at the expiration of their current 25 or 50 year term. Landowners are required to hire a Certified Plan Writer (CPW) to develop a new application, and create a new forest management plan. Through statute, special notification provisions to municipalities and counties have been removed for a renewal. Because there are fewer statutory requirements for a renewal than a new entry, it is reasonable for DNR to treat renewals differently than new entries. Landowners and foresters have noted that if forest reconnaissance and land management plans are current, and there have been no changes in land ownership, location, acreage, land use, etc., a renewal can be done without developing a new MFL plan and application.

**Proposed Modifications:** Renewals of MFL agreements would eliminate the need for landowners to develop new management plans, and ultimately the review of those plans by DNR staff. DNR would deny a renewal only if (1) the lands fail to meet eligibility requirements, (2) the landowner has failed to comply with the management plan in effect on the date the application for renewal is filed, (3) there are delinquent taxes on the land, (4) ownership and entry acreage has changed, (5) forested acreage has not had an inspection/update date in WisFIRS within the last 5 years or has not been updated to reflect any recently completed management activities, and (6) the management plan does not contain scheduled mandatory practices for the duration of the new entry period. Tax rates for renewals would be based on the 2005, or later rate schedule.

**Prospective:** This provision would be prospective since landowners who have already re-enrolled lands into the MFL program would not benefit from this modification.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

## **Leasing and Open/Closed**

### ***Proposed Revision 17: Allow small landowners to close lands regardless of acreage.***

**Current Situation:** Under current law, landowners enrolled in the MFL are allowed to close 160 acres of land to public recreation, of which only 80 acres or two legal descriptions per municipality may be lands enrolled in 2004 or earlier. This acreage limitation encourages landowners to subdivide property into different ownerships in order to legally close as much land as possible. In some situations, lands are subdivided and land-locked properties are created. The land-locked properties are taxed under MFL as open to public recreation; however there is no legal entry into the lands, making it inaccessible to the public. Landowners whose intent is to close as much land to public recreation as possible have many legal means to create different ownerships in order to close 160 acres per ownership per municipality. The ability to create different ownerships results in the majority of lands enrolled in MFL by non-industrial private landowners to be closed to public recreation. The additional number of owners in entities such as LLCs, Trusts, Partnerships, etc. also increases the number of MFL applications.

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**Proposed Modifications:** Eliminate the closed acreage limitation. The provision to remove the closed acreage limitation would allow landowners the ability to close lands to public recreation without having to create LLCs, trusts, other non-natural entities, or combinations of natural persons.

Even though this modification is contrary to the original intent of the law, it addresses the issue generating the largest number of complaints to the DNR; MFL participants navigating around the closed acreage limit.

**Prospective:** This provision would apply to landowners who are entering or renewing lands into MFL. Landowners already in the MFL would not benefit from this modification.

**Conclusion:** The CoF hesitantly, by consensus, agreed that this modification addresses the process of "gerrymandering" ownerships to increase closed acreage. The CoF also agrees with the value of MFL lands open for public use and as such recognizes the conflict with this and the proposed modification.

### ***Proposed Revision 18: Require landowners to identify access for the public, equivalent to the landowner's access, to lands open to the public or deny the ability to enroll (or keep) MFL lands as open.***

77.83(2)(d)

**(Small landowners who cannot provide access to open lands would lose their MFL-open tax status.)**

**Current Situation:** Landowners may close up to 160 acres of land to public recreation with the intent remaining lands are open to public recreation. Many landowners have learned to create multiple ownerships in order to close lands to public recreation. However; some of these ownerships are developed in a manner where lands open to public recreation are surrounded by other ownerships closed to public recreation, even though the same landowner or groups of landowners may have interests in both ownerships. This situation allows for lands open to public recreation to be effectively land-locked, making it difficult for the public to realize the benefits of recreating on MFL – Open lands.

**Proposed Modifications:** Create a provision requiring a landowner to identify access to lands open to public recreation equivalent to the access the landowner uses, or deny them the ability to enroll or maintain lands as "MFL-Open". (Landowners who cannot provide evidence of legal access to open lands

would lose their open tax status and be required to pay the closed MFL acreage rate.) This would apply to any land-locked MFL legal description.

MFL ownerships categorized by the DNR as large landowners would be provided with a mechanism to allow exceptions given the inherent possibility that over large acreages managed for timber production that a small amount of land may have access limited to the occurrence of forest management activities. This exception would also recognize the large acreage of publically accessible lands associated with these owners. In addition, designated large landowners would not be allowed the option to close lands to public use (other than as currently provided by the MFL for temporary periods).

**Retroactive:** Retroactive for existing landowners in the MFL program and prospective for new enrollments.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

### ***Proposed Revision 19: Repeal prohibition on recreational leasing for small landowners.***

**Current Situation:** MFL landowners are not allowed to receive consideration for recreation activities on MFL lands. Consideration can be in the form of cash, goods or services. Recreational users, including hunters, may give MFL landowners gifts as a thank you for recreating on private lands. The leasing prohibition was effective on January 1, 2008. Many MFL landowners who leased lands for recreation lost income with the January 1, 2008 leasing prohibition. Between 1986 and 1992, leasing of MFL lands for recreation was not allowed since leases were determined to be akin to having commercial recreation. In 1992, a change in Wis. Admin. Code allowed lands to be leased since most leases did not affect the development of the lands, and lands were left in a natural state, continuing to be managed for forestry purposes.

**Proposed Modifications:** Permit leasing including other agreements for consideration (reimbursement) allowing persons to engage in a recreational activity. This provision would reverse the 2008 legislation, allowing small landowners the ability to lease lands again.

This reinstatement would exclude DNR designated large ownerships where leasing would not be allowed consistent with the previous revision requiring large ownerships to be open for public use.

**Retroactive:** This provision would be retroactive.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

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## **DNR Oversight**

***Proposed Revision 20:*** Modify DNR oversight in on-the-ground management for certified large owners.

***Current Situation:*** MFL landowners are required to submit a cutting notice at least 30 days prior to cutting. DNR Foresters review the cutting notice and approve or deny the cutting plan within 30 days. Review of the cutting notice may, and often does, include a DNR forester site visit to the property.

***Proposed Modifications:*** The intent of this modification is to clarify recognition that DNR designated large landowners with professional forest management staff and that are third party certified are not required to have each and every harvest approved via the current cutting notice process. As presented here it is contingent on the DNR establishing a credible audit procedure to assure management occurring on MFL lands meets the program intent of sound forest management as defined in Wis. Stat. § 77.80.

***Retroactive:*** This provision would be retroactive and affect all large landowners who are 3<sup>rd</sup> party certified.

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration with the understanding DNR and large landowners are able to work to streamline a process focusing on an outcome based approach model and allow DNR authority to assure MFL compliance.

## Administration

**Proposed Revision 21:** Eliminate the study requirement for the MFL program after 5 years of its existence.

**Current Situation:** The requirement for a review of the MFL program after 5 years of MFL program has been completed.

**Proposed Modifications:** This provision cleans up wording that is no longer pertinent.

**Prospective/Retrospective:** NA

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

**Proposed Revision 22:** Update the provision for DNR to report to the legislature on the number of exempt withdrawals. Remove references to WTL and include references to tribal lands for FCL lands.

**Current Situation:** DNR is required to report to the legislature the amount of lands that are withdrawn from MFL, Forest Crop Law (FCL) and Woodland Tax Law (WTL) as an exempt withdrawal if the number of withdrawals exceeds 1% of the total acreage of lands in the programs.

**Proposed Modifications:** This provision needs updating to reflect the ending of the WTL program and the beginning of the exempt withdrawal for tribal lands for lands owned by the tribes in FCL, similar to the Wis. Stat. s. 77.885 MFL provisions.

**Prospective/Retrospective:** NA

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

**Proposed Revision 23:** Eliminate statutory provisions related to Woodland Tax Law

**Current Situation:** The Woodland Tax Law (WTL) has expired with the last WTLs expiring on December 31, 2001. Statutes continue to reference WTL and should be updated.

**Proposed Modifications:** Eliminate statutory provisions related to WTL.

**Prospective/Retrospective:** NA

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

**Proposed Revision 24:** Eliminate wording that directs the department to order MFL land withdrawn at the expiration of an MFL order period.

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**Current Situation:** DNR notifies local municipalities of lands that have expired from the MFL program similar to the expiration notices used for Forest Crop Law (FCL). DNR has not issued formal Orders of Expiration, however; DNR does notify local municipalities of lands expiring from MFL, similar to FCL expirations. Municipalities are accustomed to receiving these types of notices from DNR, so keeping the notifications similar for both programs is important. This provision allows DNR to continue using current processes rather than the formal Order of Expiration process.

77.88(4m)

**Proposed Modifications:** DNR would be required to provide a list of lands expiring from the MFL program similar to the notification provided for the FCL program

**Prospective/Retrospective:** NA

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

## SUMMARY

It is the CoF's belief this package contains a reasonable balance of outcomes across various stakeholder groups and proposed modifications adequately and reasonably addresses all seven of the initial criteria. Attempts to segregate out individual modifications or otherwise significantly alter the proposed modifications could upset this balance. The CoF process and issues brought forth by the department have been guided by the desire to focus on efforts to modernize and streamline MFL, and maintain overall program viability.

For the DNR, this package significantly addresses the streamlining and efficiencies goals through numerous efforts, some of which can be highlighted as follows:

- ✓ The re-design of the withdrawal and yield tax calculations and collections procedures
- ✓ Modifications to disallow structures
- ✓ Continued emphasis on using WisFIRS (digital plan signatures approval etc.)
- ✓ Streamlining MFL renewal and application referral procedures
- ✓ Numerous small administrative and law modifications

There are also several proposed modifications that should facilitate continued forest landowner interest and support for the MFL, some of which are as follows:

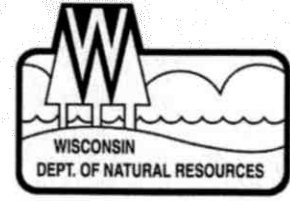
- ✓ The adjustments made to withdrawal fees and allowance for small acreage withdrawals
- ✓ Modifications to minimize impacts due to forest productivity standards
- ✓ Allowance for additions to existing neighboring MFL entries
- ✓ Altering the MFL renewal procedures for easier to re-enrollment
- ✓ Reinstatement of leasing (for small landowners)
- ✓ Removal of the limit on acreage for closed lands
- ✓ Streamline DNR oversight (for large landowners)

From the public and local government perspective it is anticipated the following proposed MFL modifications will yield continued support for the program:

- ✓ Requirement that open lands are truly open and accessible and all large ownerships remain open to public recreational use
- ✓ The elimination of provisions allowing structures on newly enrolled MFL lands
- ✓ Streamlined collection process for yield and withdrawal taxes connecting tax monies with local government more directly, and allowing collection of processing fees
- ✓ Modifications to withdrawal procedures and MFL minimum acreage eligibility which may place more lands on the regular tax role

The Managed Forest Law, with an origin dating back to 1985 has evolved over the years as necessitated to adjust to changes in a wide range of areas including in part, increasing property tax rates, digital technologies, forest certification, and an ever increasing list of desired program objectives and outcomes. Along with this came an expansion of the number and diversity of direct and indirect stakeholders. The MFL has thus evolved into a "one size fits all" program which has the potential of not being a perfect fit for any one stakeholder. Yet, to be a viable program going forward, there needs to be an acceptance of this general fit and the willingness by many to support the MFL for all of its combined benefits.





DATE: October 17, 2013

TO: Chairman Jeff Mursau, Assembly Committee on Environment and Forestry

FROM: Robert Mather, Bureau Director, Forest Management, Department of Natural Resources.

SUBJECT: Comments on **LRB -3195/P1 and drafter's note**

Dear Chairman Mursau,

Thank you for the opportunity to comment on LRB-3195/P1 and the corresponding drafter's note regarding this important proposed legislation for the Managed Forest Land (MFL) program. The following are our comments:

**I. Language Change for LRB-3195/P1 Comments**

**A. "Large parcel" definition**

The definition for "large parcel" included in Section 5, page 2., lines 12 to 13, will not work. This term was created apparently in an attempt to clarify/simplify what was recommended as a straight incorporation of Wis. Admin. Code s. NR 46.18(4) into subchapter VI of Chapter 77, Wis. Stats., pursuant to the Council on Forestry proposed revision 12. As defined, it appears to contemplate a singular contiguous parcel that is over 1,000 acres in size (i.e., "**a** parcel that is designated as managed forest land and that exceeds 1,000 acres in size" (emphasis added)) (see also, Wis. Admin. Code s. NR 46.15(25), which while not directly on point, reinforces the contiguity concern). That is not how "large ownerships" under Wis. Admin. Code s. NR 46.18(4) work or have been defined. These "large ownerships" are collections of MFL eligible lands that exceed 1,000 acres in size, and do not need to be contiguous. While each non-contiguous "parcel" must meet the minimum eligibility criteria in Wis. Stat. s. 77.82, "large ownership" owners only need to have a total of 1,000 acres that can be throughout the state (although the other factors, such as Wis. Admin. Code s. NR 46.18(4)(a)2. generally mitigates this). Additionally, some owners of "large ownerships" also maintain separate "normal" MFL orders that are not subject to the benefits/requirements of "large ownerships." This apparent misunderstanding infects the rest of the proposed changed/modified (as opposed to incorporated) language in both Section 5 and Section 19 of LRB-3195/P1. As such, if it is still deemed necessary to change to the wording of Wis. Admin. Code s. NR 46.18(4) by including any definition at all, we recommend deleting lines 12 to 13, located on page 2, Section 5, and replacing it with:

77.81 (2r) "Large ownership" means a collection of land exceeding 1,000 acres in size, approved by the department under this subchapter, that is designated as managed forest land.

This will also require replacing the term "large parcel" with "large ownership" in Section 19, page 4, lines 1, 3 and 17, and replacing "parcel" with "large ownership" in Section 19, page 4, lines 7 and 18. However, more work on Section 19 is likely needed (see below).

#### B. "Large ownership" treatment

It appears that the fundamental misunderstanding with how "large ownerships" under Wis. Admin. Code s. NR 46.18(4) works (noted above) has led to significant non-clarifying changes in Section 19, pages 3 and 4, of LRB-3195/P1.

The simple fix would be to simply renumber Wis. Admin. Code s. NR 46.18(4) to Wis. Stat. s. 77.82(3m). and replace the opening five words in Wis. Admin. Code s. NR 46.18(4)(a), which are "[t]he requirements of this section . . .", with "Notwithstanding sub. (3)(c)."

It is our understanding that the intent of the Council on Forestry under "proposed revision 12" was to incorporate the entirety of Wis. Admin. Code s. NR 46.18(4) into statute verbatim (i.e. - "copy the wording for large ownership requirements from NR 46, Wis. Admin. Code and place it into ch. 77, Wis. Stats" (emphasis added)). It is unclear what the need/desire is to rewrite a section of administrative code that has passed prior Legislative Council review prior to promulgation, and it appears that the re-write and separation from the clear intent of the Council on Forestry has only muddled the waters, and could lead to unintended consequences.

However, if there is some compelling reason to rework the language into the new framework beyond what the Council on Forestry asked for, the following issues should be addressed in Section 19, page 4, to meet the current language and interpretation of Wis. Admin. Code s. NR 46.18(4):

- ✓ 1. Line 1- replace "large parcel" with "large ownership"
- ✓ 2. Line 3- replace "large parcel" with "large ownership"
- ✓ 3. Line 5 - Line 1- replace "parcel" with "large ownership"
- ✓ 4. Line 5 – By eliminating the "or other forest tax law programs administered by the department" language found in Wis. Admin. Code s. NR 46.18(4)(a)1., the drafter is eliminating the applicability of this provision to future forest tax law programs which, while not currently in law, may none-the-less be passed into law in the future. It is also not a clarifying edit, but eliminating a substantive provision from Wis. Admin. Code s. NR 46.18(4)(a)1.
5. Line 7 – Simply replacing "parcel of land" with "large ownership" will not capture the issues addressed in Wis. Admin. Code s. NR 46.18(4)(a)2., since even with that change, it does not take into account lands proposed for entry/renewal or existing MFL and FCL lands. Recommend deleting line 7 and replacing with:

"2. The number of counties in which lands proposed for entry or renewal or the owner's existing managed forest land and forest crop land lie.

6. Line 8 – Certified plan writers do not typically write management plans for large landowners, and so the availability of a certified plan writer is not germane to large ownership designations. Large ownerships do not need certified plan writers because they have “consistent accessibility to competent technical forest management assistance through staff or consultant services. (Wis. Admin. Code s. NR 46.18(4)(a)5.). The Wis. Admin. Code s. NR 46.18(4)(a)3. requirement instead identifies the broad outline for the management plan under this section (i.e., just needs to 1) exist, 2) be available for review 3) be prepared for or by the owner and 4) be acceptable to the Department). Recommend deleting line 8 and replacing with:

“3. The existence and availability for review of a management plan prepared by or for the owner and acceptable to the department.”

7. Lines 9 to 12 – While most of the edits are intended to be clarifying, the requirement for outlining the procedure for updating and to review or audit the management plan has been eliminated from the Wis. Admin. Code s. NR 46.18(4)(a)4. A procedure for amendments to a plan (which may or may not be needed) is different from a procedure for updates (which may be required for a 50 year plan given the flexible nature of the management plans put together under this section). Recommend deleting lines 9 to 12 and replacing with:

“4. Submission of a written commitment from an owner to provide, upon department request, information from the management plan for review or audit. The commitment shall describe the management plan and outline the procedure used to update and amend the management plan.”

8. Lines 13 to 16 – Again, there appears to be a significant misunderstanding of how the large ownership designation works. Owners of large ownership designations must either have competent forestry staff on their payroll (see – Plum Creek, Futurewood, other REIT’s) or have the capacity to access them (cooperating foresters businesses, etc.). The Department does not provided direct assistance in ongoing day to day management, operations, harvests, etc., only the regulatory oversight, approval and for assistance to their staff. As a result, the language does not clarify existing Wis. Admin. Code s. NR 46.18(4)(a)5. Recommend deleting lines 13 to 16 and replacing with:

“An owner’s demonstrated consistent accessibility to competent technical forest management assistance through staff or consultant services.”

9. Lines 17 to 22 – Beyond the need replace “large parcel” and “parcel,” this attempted clarification does not equate to the language in Wis. Admin. Code s. NR 46.18(4)(b), which was requires, once the relevant MFL lands owned by the owner no longer qualify for the large ownership designation, they must all have a formal management plan for each MFL order, irrespective of contiguity or the same owner. The proposed language also appears to unnecessarily limit the “third management plan” requirements to those found in Wis. Admin. Code s. 77.82(3)(c) 4., 5., 6. And 7. These do not track to everything in Wis. Stat. s. 77.82(3)

and Wis. Admin. Code s. NR 46.16(2)(f), (g), and (h) that is found in the Wis. Admin. Code s. NR 46.18(4)(b) language. Recommend deleting lines 17 to 22 and replacing with:

“b. A management plan under s. 77.82 (3), Stats., shall be developed by owners who no longer qualify as a large ownership in sub. (4) (a). All items listed in s. NR 46.16 (2) (f), (g), and (h) must be submitted to the department for approval within one year after being notified by the department of no longer meeting the requirements in sub. (3m) (a).”

C. “Conversion of MFL Applications”

1. Page 4, lines 24 through 25 and page 25, lines 1 through 3, Section 20. Currently landowners who are renewing lands under MFL are required to hire a certified plan writer according to s. 77.82(3)(ag), Stats. The proposed language eliminates the department’s ability to write all management plans except for s. 77.82(4m)(d), Stats. It is recommended for consistency that the entire Section 20 be repealed R

D. “Renewal MFL Applications”

1. Page 5, lines 20 through 22, Section 22. The current wording does not adequately reflect the intent of the Council on Forestry recommendations in that it was not the intent of the council to deny a renewal application if past changes to the MFL acreage and boundaries occurred through past additions, withdrawal or corrections of the MFL acreage. The intent of the recommendations was to ensure that the lands renewed under the MFL program are, in fact, the exact same lands that exist in the current MFL order. Recommend deleting lines 20 through 22 and replacing it with:

“77.82(12)(a)2. Lands in the application for a renewal order are not identical to the current order.”

## II. Drafter’s Note Comments

With respect to the questions in the drafter’s note, dated October 9, 2013, for LRB-3195/P1, we offer the following:

- ✓ A. Question 1. is just a summary, and no response needed.
- B. For “Question 2.” (first one), the Department does not see a need to modify the language. It is our understanding that the intent of the Council on Forestry proposed revision 12 was to incorporate the entirety of Wis. Admin. Code s. NR 46.18(4) into statute (i.e. - “[c]opy the wording for large ownership requirements from NR 46, Wis. Admin. Code and place it into ch. 77, Wis. Stats”), including the language highlighted by Senior Legislative Attorney Mary Gibson Glass. The Department’s preference, consistent with what the Council on Forestry forwarded, is to keep the current language so that the flexibility and longstanding interpretation remains.
- ✓ C. For “Question 2.” (second one), the Department agrees that existing statutory authority found in Chapter 137, Wis. Stats. allows for the use of emails and electronic signatures for relevant approvals to address the Council on Forestry proposed revision 14.

- ✓
- D. For "Question 3.," the Department is satisfied that the language in s. 77.82 (8) under current law clearly addresses this issue.